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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/720,136	03/16/2001	Beverly B. Teter	UMARY3	7554

23599 7590 11/10/2005

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EXAMINER

WEDDINGTON, KEVIN E

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 11/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/720,136

Applicant(s)

TETER, BEVERLY B.

Examiner

Kevin E. Weddington

Art Unit

1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-18,25,26,38,45 and 51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-18,25,26,38,45 and 51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claims 10-18, 25, 26, 38, 45 and 51 are presented for examination.

Applicant's amendment filed December 30, 2004 has been received and entered.

Accordingly, the rejections made in the Office action dated September 27, 2004 is vacated so that a new Office action can be made.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 14 and 51 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 14 recites the limitation "at least one antibiotic" in claim 2 and claim 51 recites the limitation "as in claim 10, wherein the antibiotic is" in lines 1 and 2. But claim 10 does not disclose the use of other antibiotics in the composition.

There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10-12, 18, 38 and 45 rejected under 35 U.S.C. 103(a) as being unpatentable over Ohzeki et al. (4,569,846) in view of Isaacs et al. (5,434,182).

Ohzeki et al. teach a composition comprising a crude protein product and an oil mixture containing high lauric acid natural oil (palm oil and rapeseed oil). Note the composition is essentially free of other antibiotics.

The instant invention differs from the cited reference in that cited reference does not teach the instant composition is an antibacterial composition. However, the secondary reference, Isaacs et al., teaches fatty acids, including lauric acid, possess antibacterial activity. Clearly, one skilled in the art would have assumed the high lauric acid natural oil would possess the same antibacterial activity and lauric acid in that absence of evidence to the contrary. Note applicant's instant composition intended use does not distinguish the teachings of the Ohzeki et al. Applicant is reminded of the findings of In re Spada 15 USPQ2d 1655 (CAFC, 1990): "Discovery of new property or use of previously known composition, even if unobvious from prior art, cannot impart patentability to claims to known composition."

The instant invention differs from the cited references in that the cited references do not teach the weight percentage of the anti-bacterial fatty acid component of claims 12, 38 and 45. However, the determination of a weight percentage having optimum therapeutic index is well within the level of one having ordinary skill in the art, and the artisan would have been motivated to determine an optimum percentage to get the maximum effect of the composition.

Claims 10-12, 18, 38 and 45 are not allowed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15-17, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Windholz et al., THE MERCK INDEX, Tenth Edition, 1983, page 893, abstract no. 6100 in view of Isaacs et al. (5,434,182).

Windholz et al. teach monesin as a well-known antibiotic used in the animal feed of chickens. Note monesin would be effective to against *Salmonella typhimurium*, a bacteria, in the absence of evidence to the contrary.

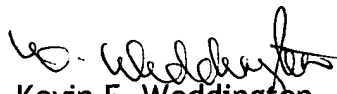
The instant invention differs from the cited reference in that the cited reference does not teach the addition of an antibacterial fatty acid as set forth in claims 25 and 26. However, the secondary reference, Isaacs et al., teaches antibacterial fatty acids. Clearly, one skilled in the art would have assumed to combination of two antibacterial agents into a single composition would give an additive effect in the absence of evidence to the contrary.

Claims 15-17, 25 and 26 are not allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin E. Weddington whose telephone number is (571)272-0587. The examiner can normally be reached on 11:00 am-7:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low can be reached on (571)272-0951. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Kevin E. Weddington
Primary Examiner
Art Unit 1614

K. Weddington
November 8, 2005